

**OPINION**  
**49-35**

September 21, 1949            (OPINION)

COUNTY JUDGE

RE:    The Fact of Having Witnessed the Will Does Not Disqualify Further Actions by County Judge After It Has Been Admitted to Probate by a Disinterested Judge

Your letter of September 19 addressed to the Attorney General has been received and contents of same have been noted.

You refer to Sections 27-0719 and 27-0720 of the North Dakota Revised Code of 1943 which provides for situations in which a judge of the county court may be disqualified.

You state that you have been disqualified in two separate cases where you were a witness to the will of the testator. I assume that you drew the will and signed as one of the subscribing witnesses.

As I take it, you are not financially interested in either of those cases, you are not next of kin of the decedent, a legatee or devisee, you have not been named as executor or trustee and are not in any other manner interested or disqualified. The only question is whether or not you are disqualified by reason of having signed the will as a witness.

You are now judge of the county court and you proceeded to call in another judge under the provisions of Section 27-0720. The other judge has conducted the hearing on the admission of the will to probate and it was admitted and letters of testamentary issued to the executor. The question has been raised, who shall act from now on.

It occurs to me that since the will has been admitted to probate and an executor has been appointed and letters of testamentary issued, that you may proceed from here and on since you are in no way interested in the estate. The fact that you signed the will as a subscribing witness could not in any way disqualify you in my judgment after the will has been admitted to probate by a disinterested judge.

It would, therefore, be my opinion that under the facts in these two cases you are not disqualified, but may act as judge in all subsequent proceedings.

WALLACE E. WARNER

Attorney General